

1 Court also found that Plaintiff stated a claim against Bilderback and Rabb for retaliation in
2 violation of the First Amendment (Count II; id. at 13-15).²

3 The Court ordered Defendants to respond to the First Amended Complaint (Doc. # 8),
4 and Defendants filed their Answer on December 4, 2009 (Doc. # 17). On January 5, 2010,
5 Plaintiff filed a Motion for Summary Judgment (Doc. # 25). Shortly thereafter, on
6 February 3, 2010, the Court issued a Scheduling Order, which set a discovery deadline of
7 October 7, 2010, and a dispositive-motions deadline of December 7, 2010 (Doc. # 31).

8 In support of his summary judgment motion, Plaintiff submitted his unsworn
9 declaration and a copy of the First Amended Complaint in this action (Doc. # 25, Attachs.).

10 In lieu of a response, Defendants moved to strike Plaintiff's summary judgment
11 motion on the grounds that Plaintiff's Statement of Facts does not comply with the Local
12 Rules of Civil Procedure and the summary judgment motion is premature because they have
13 not had time to engage in discovery (Doc. # 30). In the alternative, Defendants requested an
14 extension of time to respond to Plaintiff's motion after discovery is completed (id.).

15 Plaintiff opposed the Motion to Strike and maintained that his summary judgment
16 motion is sufficient and not premature. He claimed that the Motion to Strike is a delay tactic
17 (Doc. #16). Defendants deny that they are trying to stall the case (Doc. #17). They again
18 argue that Plaintiff's Statement of Facts is deficient and that incomplete discovery makes the
19 motion premature (id.).

20 **II. Analysis**

21 A court must grant summary judgment if the pleadings and supporting documents,
22 viewed in the light most favorable to the non-moving party, "show that there is no genuine
23 issue as to any material fact and that the movant is entitled to judgment as a matter of law."
24 Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Under
25 summary judgment practice, the movant bears the initial responsibility of presenting the basis
26 for its motion and identifying those portions of the record, together with affidavits, that it
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28 ²The Court dismissed Count III for failure to state a claim (Doc. # 8).

1 believes demonstrate the absence of a genuine issue of material fact. Celotex Corp., 477 U.S.
2 at 323. Summary judgment should not be entered where relevant evidence remains to be
3 discovered. See Klinge v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988).

4 In light of the virtually non-existent evidentiary record, summary judgment at this
5 stage would be premature. No discovery has taken place, and it is plain from the Court's
6 review of Plaintiff's motion that his claims have not been thoroughly developed. The Court
7 will therefore deny Plaintiff's Motion for Summary Judgment without prejudice to refiling
8 after discovery has occurred. Defendants' Motion to Strike will be denied as moot.

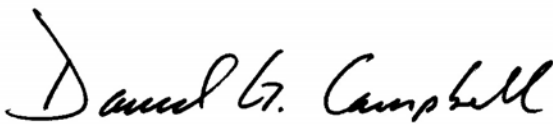
9 **IT IS ORDERED:**

10 (1) The reference to the Magistrate Judge is **withdrawn** as to Plaintiff's Motion for
11 Summary Judgment (Doc. # 25) and Defendants' Motion to Strike (Doc. # 30).

12 (2) Plaintiff's Motion for Summary Judgment (Doc. # 25) is **denied** without prejudice.

13 (3) Defendants' Motion to Strike (Doc. # 30) is **denied** as moot.

14 DATED this 19th day of April, 2010.

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19 David G. Campbell
20 United States District Judge
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